

### Remarks

Claims 1-32 are currently pending in the Application and Claims 3-4, 8, 12-21 and 27-32 are withdrawn without prejudice from consideration by the Examiner.

### Allowable Claims

Applicants acknowledge with gratitude the Examiner's indication of allowability as to Claims 22-26.

### 35 U.S.C. §102(e) Rejection

Claims 1-2, 5-7 and 9 stand rejected under 35 U.S.C. §102(e) as being anticipated by Sayyah (U.S. Publ. No. 2004/0130769A1). Applicants respectfully disagree.

The Examiner is reminded that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP 2131 quoting *Verdegaal Bros. V. Union Oil Co, of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Examiner is also reminded that "[the] identical invention must be shown in as complete detail as is contained in the ... claim." MPEP 2131 quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Applicants submit that the Examiner has not shown that Sayyah teaches each and every element as set forth in the rejected claims. In particular:

### Claim 1

Applicants submit that the Examiner has not shown that Sayyah discloses, suggests or teaches, *inter alia*, the following features recited by Claim 1 of the present application:

**"micromechanical device for moving at least one of the reflective surfaces of said pair of reflective surfaces** relative to another one of the reflective surfaces of said pair of reflective surfaces" (emphasis added)

Referring to Sayyah's Figure 1b reproduced below, the Examiner asserts that "pair of reflective surfaces" as recited in Claim 1 are disclosed by Sayyah's layers

“121” and “122.” See page 3, section 4 of the Official Action. The Examiner also asserts that a “micromechanical device” as recited in Claim 1 is disclosed in Sayyah’s Figure 3, reproduced below. See page 3, section 4 of the Official Action. Applicants respectfully traverse the Examiner’s assertion.

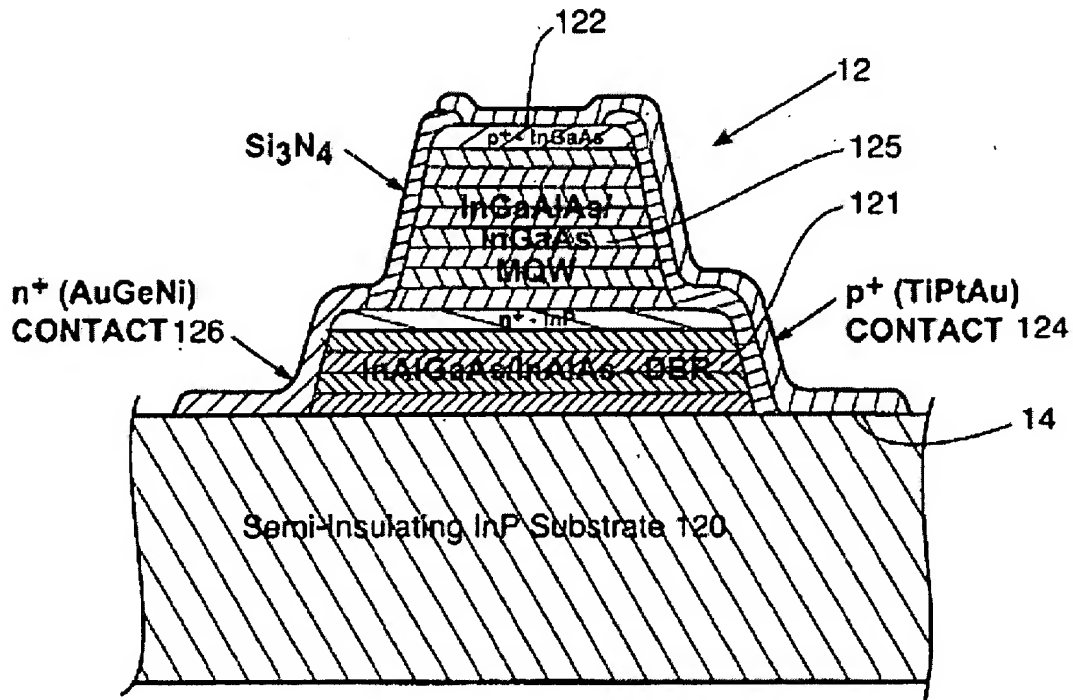


Figure 1b

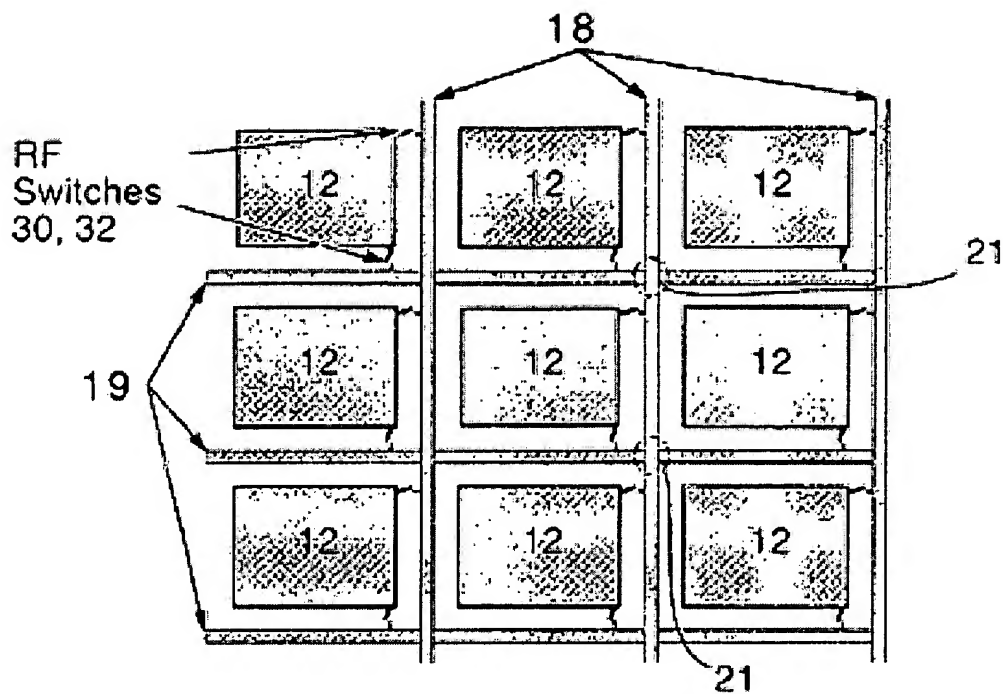


Figure 3

Looking at Figure 3 above, the devices “12” are surrounded by electrodes “18, 19” and RF switches “30, 32.” See paragraphs [0055] and [0070] of Sayyah. Where does Sayyah’s Figure 3 allegedly disclose a “micromechanical device” as recited in Claim 1? Do the electrodes “18, 19” disclose the “micromechanical device” as recited in Claim 1? Or, do the RF switches “30, 32” disclose the “micromechanical device” as recited in Claim 1?

Applicants submit that the Examiner failed to comply with 37 C.F.R. §1.104(c)(2) which states:

“In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes invention other than that claimed by Applicant, **the particular part relied on must be designated as nearly as practicable**. The pertinence, if not apparent, must be clearly explained and each rejected claim specified” (emphases added).

Applicants submit that the Examiner has failed to “designate as nearly as practicable” where Sayyah’s Figure 3 discloses the “micromechanical device” as recited in Claim 1. If the Examiner insists on alleging that Sayyah discloses the “micromechanical device” as recited in Claim 1, the Examiner is requested to comply with 37 C.F.R. §1.104(c)(2) by designating “as nearly as practicable” where the “micromechanical device” is taught by Sayyah.

Applicants further note that Sayyah’s layers “121” and “122” are part of the structure “12.” See Sayyah’s Figure 1b above. How does the Examiner arrive at a conclusion that Sayyah’s layers “121” and “122” are capable of being moved? Looking at Sayyah’s Figure 1b above, one skilled in the art can easily discern that layers “121” and “122” are incapable of being moved once they are formed and are part of the structure “12.” By alleging that layers “121” and “122” can be moved, the Examiner appears to rely on facts within his personal knowledge. Applicants respectfully request, under 37 C.F.R. § 1.104(d)(2), that the Examiner provide an Affidavit supporting the Examiner’s assertions. If the Examiner is relying on a prior art reference Applicants respectfully request that the Examiner cite the reference. Otherwise, Applicants respectfully request that the assertion be withdrawn.

Because the Examiner has not shown that Sayyah’s layers “121” and “122” are capable of being moved and because the Examiner has not shown where Sayyah’s Figure 3 discloses “micromechanical device,” Applicants submit Sayyah does not teach, disclose or suggest “micromechanical device for moving at least one of the reflective surfaces of said pair of reflective surfaces relative to another one of the reflective surfaces of said pair of reflective surfaces” as recited in Claim 1. Hence, Claim 1 is patentable over Sayyah and should be allowed by the Examiner. Claims 2 and 5, at least based on their dependency on Claim 1, are also patentable over Sayyah.

Claim 6

A. Applicants submit that, for the reasons stated above for Claim 1, Sayyah does not disclose, suggest or teach “the micromechanical device” as recited in Claim 6. Hence, Claim 6 is patentable over Sayyah and should be allowed by the Examiner. Claims 7 and 9, at least based on their dependency on Claim 6, are also patentable over Sayyah.

B. Applicants submit that the Examiner has not shown that Sayyah discloses, suggests or teaches, *inter alia*, the following features recited by Claim 1 of the present application:

“the micromechanical device being responsive to a **signal** to impart modulation to an optical beam which is retro-reflected from the retro-reflecting structure” (emphasis added)

Referring to Sayyah’s Figure 1 and 1a reproduced below, the Examiner asserts that “the micromechanical device” as recited in Claim 6 is disclosed by Sayyah’s surface “14.” See page 3, second full paragraph of the Official Action. The Examiner also asserts that the “the micromechanical device being responsive to a **signal**” (emphasis added) as recited in Claim 6 is disclosed in Sayyah’s paragraph [0060], reproduced below. See page 3, second full paragraph of the Official Action. Applicants respectfully traverse the Examiner’s assertion.

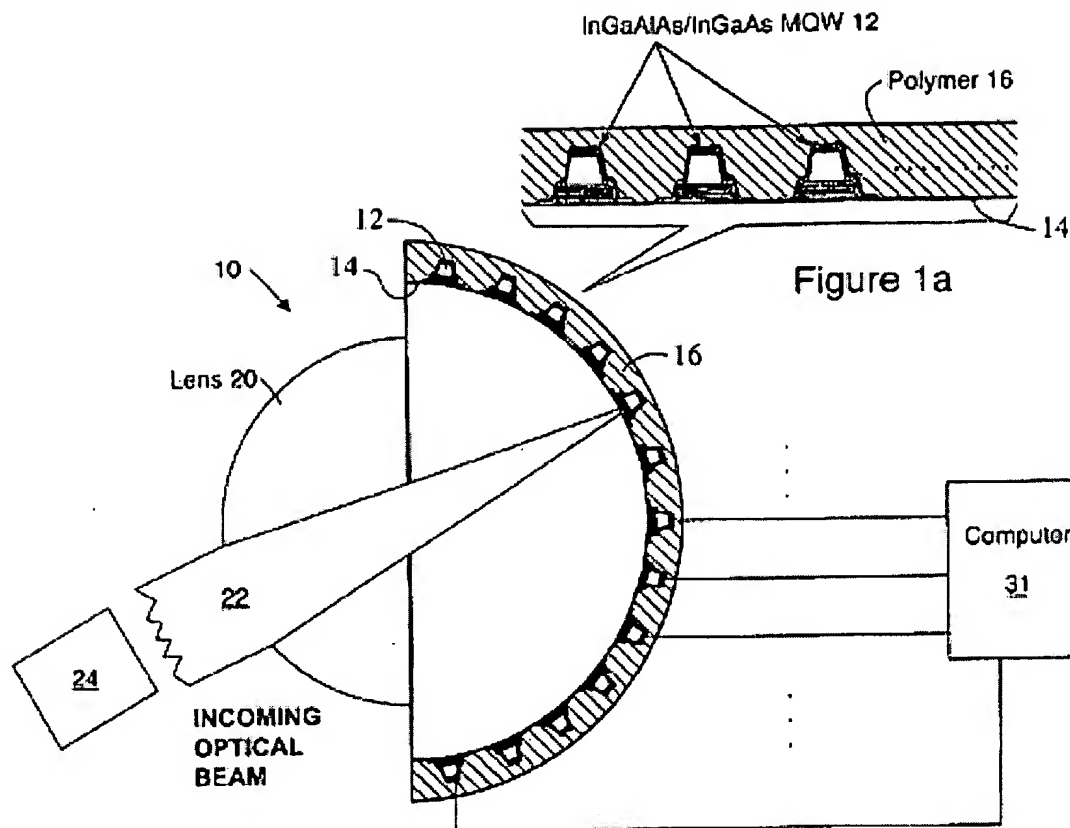


Figure 1

According to Sayyah, devices "12" are disposed on a surface "14." However, the Examiner has not shown where Sayyah discloses or suggests that the surface "14" is being responsive to any signals. As clearly shown in Figure 1, above, signals from computer "31" are for devices "12," not the surface "14." This is further supported by Sayyah's paragraph [0060] relied upon by the Examiner. According to Sayyah's paragraph [0060]:

"[0060] In a preferred embodiment, the modulation elements 12 are in the form of Asymmetric Fabry-Perot (AFP) resonator based MQWs. This class of structure has the ability of encoding the desired modulation signal with relatively low voltage (owing to the Q-enhanced resonator). Moreover, the depth-of-modulation, as well as the "dark state" (or, contrast ratio) can be very high. The AFP modulator also has the feature that in the "off state," the reflectivity is at a minimum (near zero), so that interrogation by an undesirable third party will result in a near-zero 'glint' return, enabling LPD/LPI scenarios to be achieved. This is a potentially important feature of

the present invention. In the prior art an additional shutter has been placed in front of the modulators in order to enable zero off-state return.”

By referring to Sayyah’s paragraph [0060], the Examiner failed to show where Sayyah discloses that the surface “14” is being responsive to any signals. Once again the Examiner appears to rely on facts within his personal knowledge. Applicants respectfully request, under 37 C.F.R. § 1.104(d)(2), that the Examiner provide an Affidavit supporting the Examiner’s assertions that the surface “14” is being responsive to a signal. If the Examiner is relying on a prior art reference Applicants respectfully request that the Examiner cite the reference. Alternatively, the Examiner is requested to comply with 37 C.F.R. §1.104(c)(2) by designating “as nearly as practicable” where the “micromechanical device being responsive to a signal” is taught by Sayyah. Otherwise, Applicants respectfully request that the assertion be withdrawn and Claim 6 be allowed. Claims 7 and 9, at least based on their dependency on Claim 6, are also patentable over Sayyah and should be allowed.

### **35 U.S.C. §103(a) Rejection**

Claims 10-11 stand rejected under 35 U.S.C. §103(a) as being obvious in view of Sayyah and further in view of Tsukiji (U.S. Patent No. 5,066,130). Applicants submit that the Sayyah reference is an improper reference under 35 U.S.C. §103(c).

35 U.S.C. §103(c)states:

“subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” See MPEP §2146.

The Examiner has already stated that the Sayyah reference qualifies as “prior art” under 35 U.S.C. §102(e). See page 3, section 4 of the Office Action. Applicants further submit that the subject matter of the Sayyah reference and the presently claimed invention were commonly owned at the time the present invention was made. Therefore, the Sayyah reference “is **not to be considered** when determining whether an invention sought to be

patented is obvious under 35 U.S.C. 103." See MPEP §2146. Hence, Claims 10-11 are patentable over Sayyah and should be allowed by the Examiner.

### Conclusion

In view of the above, reconsideration and allowance of all the claims are respectfully solicited.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents POB 1450, Alexandria, VA 22313-1450 on

August 21, 2006  
(Date of Deposit)

Susan Papp  
(Name of Person Signing)

Susan Papp  
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August 21, 2006  
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